

PT 01-25

Tax Type: Property Tax

Issue: Government Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

REND LAKE CONSERVANCY DISTRICT)		
	)	A.H. Docket #	00-PT-0021
Applicant	)	Docket #s	99-28-13
	)		99-28-11
v.	)		99-28-12
)		
EWING NORTHERN COMM. CONS.)		
SCHOOL DIST. # 115, BENTON COMM.)		
HIGH SCHOOL DIST. # 103, AND THE	)	Parcel Index #s	1-53-131-09
THE DEPARTMENT OF REVENUE OF	)		1-53-131-03
THE STATE OF ILLINOIS	)		1-53-131-06

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Terry R. Black, attorney at law, appeared on behalf of Rend Lake Conservancy District. Ms. Merry C. Rhoades, attorney at law, appeared on behalf of Intervenors Ewing Northern Community Consolidated School District No. 115 and Benton Community High School District No. 103.

Synopsis:

The hearing in these matters was held at the Department of Transportation Building, 1100 Eastport Plaza Drive, Collinsville, Illinois, on November 21, 2000, to determine whether or not three facilities owned by the Rend Lake Conservancy District, namely the Seasons Hotel, Fairway Condominiums, and Seasons Restaurant qualified for exemption during all or part of the 1999-assessment year.

The Seasons Hotel is a 48-unit hotel, which was situated on Franklin County Parcel Index No. 1-53-131-09. The application for exemption concerning this parcel was assigned Docket No. 99-28-13.

The Fairway Condominiums is a structure containing 24 condominium units which are located on Franklin County Parcel Index No. 1-53-131-03. The application for exemption concerning this parcel was assigned Docket No. 99-28-11.

The Seasons Restaurant is a structure containing a restaurant, a lounge, and a banquet room which is located on Franklin County Parcel Index No. 1-53-131-06. The application for exemption concerning this parcel was assigned Docket No. 99-28-12.

Mr. Lawrence A. Lipe consulting engineer for the Rend Lake Conservancy District (hereinafter referred to as the “Applicant” or the “District”), and Mr. Kevin E. Davis, general manager of the District were present and testified on behalf of the District.

Mr. Russell L. Clover, Superintendent of Intervenor Benton High School District No. 103 (hereinafter referred to as “District No. 103”) and Ms. Marian L. Nipper, Superintendent of Intervenor Ewing Northern Grade School District 115 (hereinafter referred to as “District No. 115”) were also present and testified at the hearing.

On February 10, 1994, the District leased the ground where today the Seasons Hotel is located to ESM Development Corporation (hereinafter referred to as “ESM”). ESM assigned this ground lease to Seasons at Rend Lake, L.P. (hereinafter referred to as “Seasons”). Seasons then constructed the hotel and operated it from May of 1995 to July 29, 1998. On July 29, 1998, Seasons sold the hotel and executed a partial release of the ground lease to the District which has operated it since that date including all of the 1999-assessment year.

On February 10, 1994, the District leased the ground to ESM where today the Fairway Condominiums are located. ESM assigned this ground lease to Rend Lake Development Corporation (hereinafter referred to as “Development Corporation”). Development Corporation constructed the condominiums and operated them from March of 1998 to June 30, 1999. During this time Development Corporation sold two of the units to third parties. These two units are

privately owned and subject to real estate taxes during 1999. On July 7, 1999, Development Corporation transferred the remaining 22 condominium units and assigned the ground lease to the District. Since July 7, 1999, the District has owned and operated the remaining 22 condominium units.

The Seasons Restaurant is located on ground owned by the District. The District constructed the restaurant building during 1976. Between that time and 1997 the restaurant was leased to and operated by various entities. The District leased the restaurant to the Development Corporation on February 1, 1997. The Development Corporation operated the restaurant from February 1, 1997, through October 31, 1997. On October 31, 1997, the Development Corporation transferred all of its interest in the restaurant to the District. Thereafter the District operated the Seasons Restaurant.

The issues in this matter include whether the District used the Seasons Hotel and the Seasons Restaurant primarily for public purposes during the 1999-assessment year and also whether the District used 22 units of the Fairway Condominiums for primarily public purposes during the 1999-assessment year.

Based on the evidence and testimony presented in this matter it is determined that the Seasons Hotel and the Seasons Restaurant were primarily used for public purposes during the 1999-assessment year and also that 22 units of the Fairway Condominiums were primarily used for public purposes during the period July 7, 1999, through December 31, 1999.

It is therefore recommended that the Seasons Hotel and Franklin County Parcel Index No. 1-53-131-09 on which it was located on January 1, 1999, be exempt from real estate taxation for the 1999-assessment year. It is also recommended that 22 units of the Fairway Condominiums and Franklin County Parcel Index No. 1-53-131-03, on which they were located on January 1, 1999, be exempt from real estate taxation for 49% of the 1999-assessment year. Finally it is recommended that the Seasons Restaurant and Franklin County Parcel Index No. 1-53-131-06 on which it was located on January 1, 1999, be exempt from real estate taxation for the 1999-assessment year.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue (hereinafter referred to as the “Department”) in this matter was established by the admission in evidence of Department’s Exhibit Nos. 1 through 10B.

2. On January 13, 2000, the District filed Applications for Property Tax Exemption concerning the Seasons Hotel, the Fairway Condominiums, and the Seasons Restaurant. On January 19, 2000, the District mailed copies of each of the three Applications for Property Tax Exemption to District No. 115, District No. 103, and Rend Lake Junior College. The three parcels in issue were not located within any municipality. (Dept. Ex. Nos. 2, 2I, 2J, 2S, 2T, & 2AC)

3. On January 26, 2000, the Franklin County Board of Review determined that Franklin County Parcel Index No. 1-53-131-09 and the Seasons Hotel located thereon was not in exempt use during the 1999-assessment year and recommended the denial of that parcel. The Board then forwarded that Application to Department. (Dept. Ex. No. 2)

4. On January 26, 2000, the Franklin County Board of Review determined that Franklin County Parcel Index No. 1-53-131-03 and the Fairway Condominiums located thereon were not in exempt use during the 1999-assessment year and recommended the denial of that parcel. The Board then forwarded that Application to Department. (Dept. Ex. No. 2J)

5. On January 26, 2000, the Franklin County Board of Review determined that Franklin County Parcel Index No. 1-53-131-06 and the Seasons Restaurant located thereon was not in exempt use during the 1999-assessment year and recommended the denial of that parcel. The Board then forwarded that Application to Department. (Dept. Ex. No. 2T)

6. On March 23, 2000, the Department issued its decisions that the parcels here in issue were not in exempt use. (Department Ex. Nos. 3, 3A, & 3B)

7. On April 3, 2000, the attorney for the District requested a formal hearing in these matters. (Dept. Ex. Nos. 4, 4A, & 4B)

8. A Pre-Trial Conference was held in these matters on July 7, 2000. The Pre-Trial Order issued as a result of that conference provided that any taxing district wishing to file a Petition To Intervene in these matters must do so on or before August 1, 2000. (Dept. Ex. No. 5)

9. On August 1, 2000, the attorney for District No. 115 and District No. 103 filed a timely Petition to Intervene in these matters which was noticed for hearing on August 7, 2000. The attorney for the District did not object to the Petitions to Intervene. The Petitions to Intervene were allowed. Both the attorney for the Intervenor and the attorney for the District then moved to continue the hearing in this matter which was scheduled for August 22, 2000. That motion was also allowed. A Status Conference was then scheduled for September 26, 2000. (Dept. Ex. No. 7)

10. At the Status Conference held on September 26, 2000, a hearing was scheduled in this matter for November 21, 2000, at 9:00 A. M. (Dept. Ex. No. 9)

11. On January 17, 1955, the County Judge of Franklin County and the County Judge of Jefferson County sitting as a Board of Commissioners determined that the proposition for the creation of the proposed conservancy district had been legally approved by the voters of the District. The Board of Commissioners also determined that the Rend Lake Conservancy District was a duly organized conservancy district and a municipal corporation. (Appl. Ex. No. 3)

12. The land on which the Seasons Hotel was later constructed was acquired by the District by warranty deeds dated September 16, 1964, January 14, 1965, and November 3, 1967. This property on January 1, 1999, was identified as Franklin County Parcel Index No. 1-53-131-09. (Dept. Ex. Nos. 2C, 2D, & 2E, Bd. Of Rev. Ex. No. 1)

13. The District leased this property to ESM pursuant to a ground lease dated February 10, 1994. On October 6, 1994, ESM assigned the ground lease to Seasons. Seasons then began construction of the hotel and completed it during 1995. Seasons then operated the hotel from May of 1995 to July 29, 1998. Seasons conveyed the hotel to the District on July 29, 1998. Two days later Seasons released its interest in the Ground Lease. Since August 1, 1998, the District

has operated the Seasons Hotel as well as owning it. (Dept. Ex. Nos. 2G, Appl. Ex. Nos. 5, & 2, & Dept. Ex. No. 2H)

14. The land on which the Fairway Condominiums were later constructed was acquired by the District by warranty deeds dated September 16, 1964, January 14, 1965, and November 3, 1967. This property on January 1, 1999, was identified as Franklin County Parcel Index No. 1-53-131-03. (Dept. Ex. Nos. 2C, 2D, & 2E, Bd. Of Rev. Ex. No. 1)

15. The District leased this property to ESM pursuant to a ground lease dated February 10, 1994. ESM assigned its interest in the Ground Lease to Development Corporation on December 18, 1996. Development Corporation then began construction of the condominiums. The condominiums were completed in March of 1998. The Development Corporation then maintained the condominiums and attempted to sell them to third parties from March of 1998 to June 30, 1999. (Tr. p. 67, Dept. Ex. No. 2G, Appl. Ex. 26)

16. During the time that Development Corporation operated the condominiums, it sold two of the units to third parties. These two units are excluded from the Application for Exemption that the District filed in this matter. (Tr. p. 46)

17. On July 7, 1999, Development Corporation conveyed its interest in the condominiums pursuant to an Assignment and Assumption of the Ground Lease to the District. Since July 7, 1999, the District has owned and operated 22 of the units of the Fairway Condominiums. The District rents these condominiums primarily as overnight accommodations although two of them have been rented for longer terms. (Tr. pp. 46 & 47, Dept. Ex. No. 2R)

18. The land on which the Seasons Restaurant was constructed was acquired by the District by warranty deeds dated September 16, 1964, January 14, 1965, and November 3, 1967. This property on January 1, 1999, was identified as Franklin County Parcel Index No. 1-53-131-06. (Dept. Ex. Nos. 2C, 2D, & 2E, Bd. Of Rev. Ex. No. 1)

19. The Seasons Restaurant was constructed by the District in 1976, and has always been owned by the District. It was operated by various entities between that time and 1997. The District leased the restaurant operations to Development Corporation by a document entitled

Restaurant Lease effective February 1, 1997. Development Corporation operated the restaurant from February 1, 1997, to October 31, 1997. On October 31, 1997, the Development Corporation transferred its interest in the Seasons Restaurant to the District pursuant to a Mutual Satisfaction and Cancellation of the Restaurant Lease. Since October 31, 1997, the District has operated the Seasons Restaurant as well as owning it. (Tr. p. 57, Dep. Ex. Nos. 2AA, & 2AB)

20. The District is a special purpose unit of government. The District was created pursuant to the River Conservancy Districts Act of 1925. The District is a municipal corporation. The District has the power of taxation and levies taxes on real estate in Jefferson and Franklin Counties of Illinois. (Tr. pp. 29 & 30)

21. The River Conservancy Districts Act authorizes the District to engage in a number of activities including creating a water supply for the surrounding area. In fact one of the primary purposes for building Rend Lake was to establish a water supply for the area. The District owns and operates a water treatment plant located on the lake which provides water to 55 cities, villages, and water districts in the area. Some of the larger communities which receive water from the District are Mt. Vernon, Benton, West Frankfort, Johnston City, Herrin, Du Quoin, and McLeansboro. In addition to the water treatment plant the District also owns and operates a water distribution system, including ground storage facilities and pumps. The District operates approximately 300 miles of water transmission mains. Water is available to anyone in proximity to the distribution systems of the District and the various water systems served by the District, who is willing to pay the charges for the water delivered. (Tr. pp. 35 & 36)

22. The District also operates a sewage treatment plant located in Ewing, Illinois. This plant serves the sewage treatment needs of the various developments of the District and other developments around the lake including Rend Lake Resort, the State of Illinois Wayne Fitzgerald State Park, and the Big Muddy River Correctional System. The sewage treatment system also serves members of the public in the area who are willing to pay the charges. (Tr. pp. 36 & 37)

23. The District operates a shooting complex, a hunting complex, and a 27-hole golf course. Each of these facilities is available to members of the general public who are willing to pay the fees to use the facilities. (Tr. pp. 37-41)

24. The District operates a public boat access ramp on Rend Lake. The District does not charge the members of the public who use this boat access ramp. (Tr. pp. 39 & 40)

25. The Seasons Hotel and the Fairway Condominiums were not financially profitable to their developers. Since the hotel and the condominiums were a part of the recreational facilities at the lake, the District decided to and did purchase them so that it could control the quality of the services that they provided. (Tr. pp. 60-70)

26. Prior to 1999, the Seasons Restaurant was not operating profitably. By mutual agreement, Development Corporation chose to cancel the restaurant lease and the District chose to directly operate the Seasons Restaurant and did in fact so operate the restaurant. (Tr. pp. 74-77)

27. The operations of the District include the boat ramp, the restaurant, the hotel, the condominiums, the shooting complex, the golf course, the water purification and distribution facilities, the sewage treatment facilities as well as farming, and oil leasing. The income from all of the foregoing activities goes into the general bank accounts of the District except for the monies from the water purification and distribution system. Restrictions concerning the bonded indebtedness of the water purification and distribution system require that income from those facilities go into separate accounts. The expenses of the activities other than the water system are paid from the general bank accounts of the District. The expenses of the water system are paid out of the separate water system accounts. (Tr. pp. 50-56)

28. The District does not have any shareholders, any partners or any owners. (Tr. p. 56)

29. The District paid approximately two million dollars for the twenty-two condominiums when it purchased them during 1999. (Tr. pp. 104)

30. The District paid approximately two million dollars for the 48-unit Seasons Hotel property in 1998. (Tr. pp. 105)

31. Mr. Davis, general manager of the District, in response to questions by the attorney for Intervenor indicated that there was no document which required that a person using the hotel, the condominiums, or the restaurant to state the exact reasons why they were using the aforementioned facilities. (Tr. pp. 89 & 90)

32. Pursuant to cross-examination by the attorney for the Intervenor, Mr. Davis did testify that two persons who stayed at the condominiums in 1999 were starring in a movie that was being shot at the Lake. He also testified as to several of his acquaintances and why they were staying there. One was the designer of the shooting complex. Others were members of the Illinois Association of Park Districts, who were attending a conference at these facilities. Mr. Davis then named other individuals and indicated that some would have used the golf course, the shooting complex, or the boat ramp. (Tr. pp. 92-98)

33. Mr. Clover, Superintendent of District 103, testified that he had taken the secretaries, the social workers, and the bookkeepers of the district to lunch at the Seasons restaurant on seven or eight occasions during 1999. He also indicated that he had attended superintendents meetings conducted by the regional superintendent of schools in the banquet or conference room at the restaurant. Also in 1999 the Benton High School junior-senior class banquet was held at the banquet facilities at the restaurant. (Tr. pp. 108-111)

34. Ms. Nipper, Superintendent of District 115, testified that she and her family liked to eat out on Sundays at the Seasons Restaurant. During 1999 they probably ate there 15 or 20 times. She had also attended the regional superintendent of school's superintendents meeting in the conference room at the restaurant during 1999. She attended the retirement dinner for her predecessor superintendent at the Seasons Restaurant. The eighth grade classes of her school district held an etiquette dinner at the Seasons Restaurant during 1999. (Tr. pp. 117-120)

Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts

and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Special purpose municipal corporations qualify for exemption pursuant to 35 ILCS 200/15-75 which states as follows:

All market houses, public squares and other public grounds owned by a municipal corporation and used exclusively for public purposes are exempt.

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986). From the foregoing cases it is clear that the burden of proof is on the one seeking the exemption to establish that it is entitled to the exemption.

The General Assembly defined the purposes of River Conservancy Districts pursuant to the River Conservancy Districts Act of 1925 which is currently found at 70 ILCS 2105/1 and states as follows:

Whenever the unified control of a lake or of a river system or a

portion thereof shall be deemed conducive to the prevention of stream pollution development, conservation and protection of water supply, preservation of water levels, control or prevention of floods, reclamation of wet and overflowed lands, development of irrigation, conservation of soil, provision of domestic, industrial or public water supplies, collection and disposal of sewage and other public liquid wastes, provision of forests, wildlife areas, parks and recreational facilities and to the promotion of the public health, comfort and convenience the same may be organized as a conservancy district under this Act. . . .

The General Assembly then at 70 **ILCS** 2105/9b (d) provided that the board of trustees of a conservancy district shall have the following powers and duties:

The board shall have the power, if it shall find it conducive to the public health, comfort or convenience to acquire sufficient land contiguous to its reservoir or reservoirs for the establishment of recreational grounds and the right to permit such reservoir or reservoirs to be used for recreational purposes and to construct on such grounds a building or building and other improvements for such recreational purposes;

The General Assembly further expressed its intent at 70 **ILCS** 2105/11 (1) as follows:

The board of trustees of a conservancy district incorporated under this Act may acquire, by gift, purchase or lease, land or any of the facilities enumerated below, and may construct, develop operate extend and improve such facilities: . . .

(c) Lodges, cottages, . . . and other related buildings and facilities for the accommodation and recreation of persons visiting the reservoirs owned by the district If the board determines to operate any such recreational facilities, it shall establish for the revenue-producing facilities rates and charges which at least defray all fixed, maintenance, and operating expenses.

The District and the Intervenors agree that the District is a municipal corporation. As a special purpose corporation, the statute states that the property of the District and the facilities thereon are “public grounds.” Property that is open to the public is open to “all persons who, in the pursuit of business or pleasure, may have occasion to resort thereto, subject of course, to whatever municipal regulations may be in force regulating the use of the same.” Sanitary District of Chicago v. Martin, 173 Ill. 243, 249 & 250 (1898).

The Seasons Hotel, the Fairway Condominiums, and the Seasons Restaurant were each leased to and operated at one time by a non-exempt third party. At that time they were each on the tax rolls and assessed for taxes as well they should have been. During all of the 1999-assessment year the District owned and operated the Seasons Hotel and the Seasons Restaurant. During the period July 7, 1999, through December 31, 1999, the District owned and operated 22 units of the Fairway Condominiums.

In the case of the People v. Nelson, 133 Ill. 565 (1890), in examining the statute creating the Chicago Sanitary District our Supreme Court stated at page 579:

All corporations, as they exist in this country, are the creatures of legislative power, and it necessarily follows that the determination as to what shall be their constitution, objects and powers is a matter wholly within the legislative discretion.

In the River Conservancy Districts Act of 1925, pursuant to which the District is organized, the General Assembly defined what were “public purposes”. That definition includes not only the creation of a water supply and a sanitary disposal system but also recreational facilities and facilities for public accommodation to assist members of the public in utilizing the recreational facilities previously authorized. In 1999, recreational facilities operated by the District around Rend Lake included the 27-hole golf course, the shooting complex, the hunting complex, and the public access boat ramp. To assist the general public in utilizing these facilities, the District during 1999 owned and operated the Seasons Hotel and the Seasons Restaurant. During the period July 7, 1999, through December 31, 1999, the District owned and operated 22 of the Fairway Condominiums. These facilities of public accommodation pursuant to their authorization by the General Assembly in the River Conservancy Districts Act were ready and available to the general public for use in 1999 in connection with the use of the recreational facilities of the District.

In the Intervenor’s brief, the attorney for the Intervenor pointed out that the Seasons Restaurant was used by the Superintendents of the Intervenor for private purposes and also by for profit corporations for their own purposes. In that brief the attorney for the Intervenor also

pointed to the fact that certain persons who stayed at the lodging facilities did so for purposes other than using the recreational facilities of the District. As to the Fairway Condominiums the attorney for the Intervenor pointed out that there were several people who had stayed there for rather long times. The attorney for the Intervenor then alleged that these properties were not used for public purposes as required by 35 ILCS 200/15-75 and cited the case of Harrisburg-Raleigh Airport Authority v. Department of Revenue, 126 Ill.2d 326 (1989) as supporting that position. In the Harrisburg-Raleigh case the Supreme Court determined that the General Assembly had defined the term “airport authority purposes” in the exemption statute now found in 35 ILCS 200/15-160 in “An Act in relation to airport authorities”. The Court determined that the leasing of hangars for less than a year at airport authority airports to private aircraft owners, on a first come first serve basis for a fee was an exempt “airport authority purpose.” The foregoing conclusion of the Court is essentially the same as the District’s position in this case. That position is that the term “public purposes” was defined by the General Assembly in the River Conservancy Districts Act of 1925 under which the District is organized and that the District is using these three facilities for “public purposes” as defined at 70 ILCS 2105/11(1).

Concerning the issue of the length of stay in the condominiums the District had only owned these facilities for a little less than six months in 1999. That time period is substantially less than the Supreme Court’s year criteria used in the Harrisburg-Raleigh case. Clearly then, the Harrisburg-Raleigh case cited by the attorney for the Intervenor supports the District’s position.

I agree with the attorney for the district that the issue in this case is whether or not the District as the owner of these properties was using them in accordance with “public purposes” as that term was defined by the General Assembly in the River Conservancy Districts Act of 1925. In this case the District owned these properties and used them as public accommodations which were defined as “public purposes” by the General Assembly in the River Conservancy Districts Act.

Based on the evidence and testimony presented in this matter it is determined that the Seasons Hotel and the Seasons Restaurant were primarily used for public purposes during the 1999-assessment year. In addition, 22 units of the Fairway Condominiums were primarily used for public purposes during the period July 7, 1999, through December 31, 1999, the length of time that the District owned and operated them.

It is therefore recommended that the Seasons Hotel and Franklin County Parcel Index No. 1-53-131-09 on which it was located on January 1, 1999, be exempt from real estate taxation for the 1999-assessment year. It is also recommended that 22 units of the Fairway Condominiums and Franklin County Parcel Index No. 1-53-131-03, on which they were located on January 1, 1999, be exempt from real estate taxation for 49% of the 1999-assessment year. Finally it is recommended that the Seasons Restaurant and Franklin County Parcel Index No. 1-53-131-06 on which it was located on January 1, 1999, be exempt from real estate taxation for the 1999-assessment year.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
April 10, 2001